

REMARKS

The final Office Action of January 13, 2009, has been received and reviewed.

Claims 1-16 and 18-23 are currently pending and under consideration in the above-referenced application. Each of claims 1-16 and 18-23 has been rejected.

Reconsideration of the above-referenced application is respectfully requested.

Rejections under 35 U.S.C. § 112, First Paragraph

Claims 1-16 and 18-23 have been rejected under 35 U.S.C. § 112, first paragraph, for being drawn to subject matter that purportedly lacks an adequate written description in the as-filed specification of the above-referenced application. Specifically, it has been asserted that the as-filed specification lacks any express or inherent description of “egg-specific proteins,” as recited by independent claims 1 and 20.

In an effort to advance prosecution of the above-referenced application, it is proposed that independent claims 1 and 20 be amended to replace the phrase “egg-specific proteins” with “other egg yolk proteins.” It is respectfully submitted that, when reading the as-filed specification (particularly paragraph [0058]), one of ordinary skill in the art would readily perceive that extract may not only include transfer factor, but other egg yolk proteins that would distinguish the egg yolk extract from transfer factor obtained from other sources.

Based on the foregoing, it is believed that amended independent claims 1 and 20 are drawn to subject matter that has adequate basis in the as-filed specification of the above-referenced application, as required by the first paragraph of 35 U.S.C. § 112.

Rejections under 35 U.S.C. § 112, Second Paragraph

Claims 1-16 and 18-23 have also been rejected under 35 U.S.C. § 112, second paragraph, for reciting subject matter that is purportedly indefinite. In particular, it has been asserted that the recitation of “egg-specific proteins” is indefinite.

It is proposed that the recitation “egg-specific proteins” has been removed from both independent claim 1 and independent claim 20. Removal of this phrase from independent claims 1 and 20 would render the 35 U.S.C. § 112, second paragraph, rejections moot.

Rejections under 35 U.S.C. § 102

Claims 1-16 and 19-23 have been rejected under 35 U.S.C. § 102(e) for reciting subject matter that is purportedly anticipated by the subject matter described in U.S. Patent Application Publication 2002/0044942A1 of Dopson (hereinafter “Dopson”).

A claim is anticipated only if each and every element, as set forth in the claim, is found, either expressly or inherently described, in a single reference which qualifies as prior art under 35 U.S.C. § 102. *Verdegaal Brothers v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

The indication that the 35 U.S.C. § 102(e) rejection based on Dopson may be overcome by filing an affidavit in accordance with the requirements 37 C.F.R. § 1.131 is gratefully acknowledged. Applicants are in the process of preparing and executing such an affidavit, and will forward the same to the Office once it is available.

Entry of Amendments

It is respectfully requested that the proposed amendments be given sufficient consideration that a determination may be made as to whether they place any of the claims in condition for allowance or reduce the number of issues that remain for purposes of appeal. M.P.E.P. § 714.13(III).

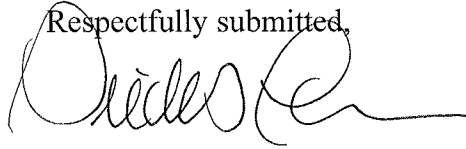
Entry of the proposed claim amendments is respectfully solicited. It is respectfully submitted that none of the proposed claim amendments introduces new matter into the above-referenced application, and it is not believed that their entry would necessitate another search. It is also believed that the proposed claim amendments eliminate all of the issues that remain for purposes of appeal.

In the event that a decision is made not to enter the proposed claim amendments, their entry upon the filing of a Notice of Appeal in the above-referenced application is respectfully requested.

CONCLUSION

It is respectfully submitted that each of claims 1-16 and 18-23 is allowable. An early notice of the allowability of each of these claims is respectfully solicited, as is an indication that the above-referenced application has been passed for issuance. If any issues preventing allowance of the above-referenced application remain which might be resolved by way of a telephone conference, the Office is kindly invited to contact the undersigned attorney.

Respectfully submitted,



Brick G. Power
Registration No. 38,581
Attorney for Applicants
TRASKBRITT, PC
P.O. Box 2550
Salt Lake City, Utah 84110-2550
Telephone: 801-532-1922

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